

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 28, 2007
POSITION: Oppose
SPONSOR: Children's Advocacy Institute, National Center
for Youth Law

BILL NUMBER: SB 39
AUTHOR: C. Migden

BILL SUMMARY: Child Abuse and Neglect: Juvenile Case Files

This bill would require: (1) county welfare agencies to release certain information contained in juvenile case files that pertain to a child fatality as a result of suspected or substantiated abuse or neglect, upon the request of any interested party, (2) juvenile courts to favor the release of other documents contained in juvenile case files that pertain to a child fatality, upon a petition filed by any interested party, (3) county welfare agencies to notify the Department of Social Services (DSS) of every child fatality resulting from abuse or neglect and the DSS to annually issue a report identifying these fatalities, and (4) the DSS to issue all county letters or similar instructions to counties to implement the statutory changes contained in this bill, if enacted, and to adopt emergency regulations no later than January 1, 2009.

FISCAL SUMMARY

This bill would result in additional workload (one-time and ongoing) for the DSS that likely would not be absorbable within existing resources. We estimate this bill would require at least 1.0 position for the DSS to address this workload. This bill also would create additional workload for counties and juvenile courts, but we would expect the associated costs to be minor and/or absorbable.

COMMENTS

Despite the merits of this bill, which would implement changes to current disclosure requirements in an attempt to help reduce and prevent fatalities of children in the state's child welfare system, the Department of Finance is opposed to this bill for the following reasons:

- This bill would impose additional workload on the DSS that likely would not be absorbable within existing resources. As a result, a General Fund augmentation would be necessary to carry out the provisions of this bill.
- The provisions of this bill that require counties to release certain juvenile case file information pertaining to a child fatality upon request of any interested party are unnecessary, as the DSS currently is in the process of developing instructions to counties regarding disclosure and redaction of records pertaining to fatalities and near-fatalities.
- This bill would only partially satisfy public disclosure requirements under the federal Child Prevention and Treatment Act (CAPTA) as it does not address disclosure of findings or information related to child near-fatalities as a result of abuse or neglect.

Analyst/Principal (0533) N. Buchen	Date	Program Budget Manager Michael Wilkening	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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ANALYSIS**A. Programmatic Analysis**

Current law requires the juvenile case file of a dependent child or ward of the court to be kept confidential, except that specified persons or entities are authorized to inspect these case file records. Current law also requires disclosure of any or all records to any interested party, upon petition and subsequent court order to release the records.

Existing law requires that juvenile case files that pertain to a deceased child who was within the jurisdiction of the juvenile court be released to the public pursuant to an order by the court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. State law also authorizes the presiding judge to prohibit or limit access to such juvenile case files only if releasing all or a portion of the file would be detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the deceased child.

Current federal law establishes the CAPTA, which authorizes funding for states to develop and implement child protection measures within the child welfare system. States receiving CAPTA funding are required to have provisions that (1) ensure confidentiality of all records to protect the rights of the child and the child's parents or guardians and (2) allow public disclosure of findings or information about child abuse or neglect cases that result in a child fatality or near-fatality.

This bill would require juvenile courts to favor the release of documents in a juvenile case file of a deceased child unless the court determines that confidentiality must be maintained pursuant to other state laws or regulations. This bill also would set forth the procedure for releasing juvenile case files pursuant to a court order and would establish time frames for filing objections and scheduling hearings.

In addition, this bill would require county welfare agencies to release, upon a request by any public entity, specific information related to a child fatality when there is a reasonable suspicion that the fatality was caused by abuse and neglect, and would require this information to be made available within five business days of the fatality. For cases where the abuse or death was determined to be the cause of the child's death and upon completion of an investigation, this bill would require additional, specific juvenile case file records and documents to be released to the public within ten business days of the request or the disposition of the investigation, whichever is later. This bill would require counties to redact certain identifying information from these records, any information that may jeopardize a criminal investigation, or any information that is privileged, confidential, or not subject to disclosure pursuant to any other state or federal law.

This bill would require the DSS to develop standards governing redactions for counties releasing juvenile case files records that pertain to a child fatality caused by abuse or neglect. This bill also would require the DSS to develop and adopt emergency regulations, no later than January 1, 2009, to implement the statutory requirements contained in this bill regarding disclosure of juvenile case file records not subject to a court order. This bill would provide the DSS and counties with the authority to comment on child fatality cases upon the release of documents as specified in this bill. Finally, this bill would require counties to notify the DSS of every child fatality that occurs within its jurisdiction that was the result of abuse or neglect, and would require the DSS to annually issue a report identifying these fatalities and any systemic issues or patterns revealed by the notices and other relevant information.

Discussion—The sponsors of this bill contend that current state law does not allow for reasonable and timely access to non-confidential records within juvenile case files in cases where a child's death

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occurred due to suspected or substantiated abuse or neglect. Without access to certain information in the case file, efforts to develop policy and reform to prevent such tragedies are hampered. According to the sponsors, the current court process to retrieve case file documents is costly and lengthy, and current law favors the interested parties who object to the release of these documents. The sponsors contend that this bill would remove the existing barriers to obtaining juvenile case file documents while continuing to preserve the privacy rights of those involved in cases where suspected or substantiated abuse or neglect caused the child fatality.

It appears this bill would only partially satisfy public disclosure/confidentiality of child fatality and near-fatality records requirements under the federal CAPTA, which requires states to (1) ensure confidentiality of all records to protect the rights of the child and the child's parents or guardians and (2) allow public disclosure of findings or information about child abuse or neglect cases that result in a child fatality or near fatality. The federal government has determined that California does not currently meet these requirements, and the DSS subsequently developed and released instructions to counties regarding specific disclosure requirements. Currently, the DSS is revising these instructions based on additional review of existing state and federal statutes. Therefore, this bill's provisions that address non-court ordered public disclosures related to child fatalities appear unnecessary.

This bill would not address the CAPTA requirements regarding the public disclosure of findings and information related to near-fatalities due to abuse or neglect. However, as noted above, the DSS is currently revising guidelines to counties regarding compliance with the CAPTA.

Currently, we have no concerns with the statutory changes this bill would implement concerning a court-ordered release of juvenile case file records that pertain to a deceased child.

B. Fiscal Analysis

This bill would result in additional workload (one-time and ongoing) for the DSS that likely would not be absorbable within existing resources. The one-time activities would include setting forth standards for counties governing redactions of certain identifying information in juvenile case files that pertain to a child fatality and developing emergency regulations to implement the statutory changes contained in this bill. Ongoing costs would include providing technical, programmatic, and legal expertise to counties in regards to disclosure of information in cases of child fatalities caused by abuse or neglect, analyzing child fatality data to identify systemic issues or patterns, and developing recommendations for counties to employ to increase the well-being of children and to prevent future fatalities. We estimate the DSS would require at least 1.0 position to address this workload.

This bill also would result in additional workload for counties related to responding to public requests for information contained in juvenile case files. As this bill would create a reimbursable state mandate, the non-federal portion of these costs would be borne by the General Fund. However, we expect that any additional costs would be relatively minor, as counties currently are required to report certain information regarding child fatalities to the DSS and to other entities as a result of a court order. In addition, the current version of the 2007-08 Budget Bill includes \$199,000 (\$107,000 General Fund) for counties to comply with the CAPTA disclosure requirements.

Any costs related to the provision of this bill that would require juvenile courts to conduct hearings related to the release of information contained in juvenile case files related to child fatalities would be minor and absorbable, as this bill would not materially alter the courts' overall management of these types of cases.

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

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Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2007-2008	FC	2008-2009	FC	2009-2010	Code
0250/Jud Branch	LA	No		-----	No/Minor Fiscal Impact	-----			0001
5180/Social Svcs	SO	No		-----	See Fiscal Analysis	-----			0001
5180/Social Svcs	SO	No		-----	See Fiscal Analysis	-----			0890
5180/Social Svcs	LA	No		-----	No/Minor Fiscal Impact	-----			0001
5180/Social Svcs	LA	No		-----	No/Minor Fiscal Impact	-----			0890

Fund CodeTitle

0001

General Fund

0890

Trust Fund, Federal